

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

February 15, 2007

A meeting of the Board of Environmental Protection was held on Thursday, February 15, 2007 at the Civic Center, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 11:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Virginia Plummer, and Matt Scott. Nancy Ziegler arrived at approximately 11:20. Board member Richard Gould arrived at approximately 12:30 p.m.

Absent Board members Denis Culley and Don Guimond

Matt Scott departed at 12:00 p.m.

Staff: Bureau of Land and Water Quality Mark Stebbins

Others: David P. Littell, Commissioner
Mary Sauer, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Significant Wildlife Habitat Rule: The Department's proposed changes to the Significant Wildlife Habitat rule have been posted to the Department's web site. The Department's primary recommended change is to the buffer zone for shorebird habitat. The buffer has been divided into two categories: (1) roosting areas and (2) feeding and staging areas. The proposal maintains a 250-foot buffer around bird roosting areas, reflecting that these areas are the most sensitive for shorebirds, and a 75-foot buffer around the feeding and staging areas with the addition of more a restrictive cutting standard.

Regional Greenhouse Gas Initiative: A major Regional Greenhouse Gas conference was held last week and Governor Baldacci announced that Maine will require a 100% public benefit allocation. Allocation options include dedicating some of the benefits to (1) energy efficiency initiatives, (2) rebates to rate payers, and (3) a special allowance account for combined heat and power facilities. The plan is expected to be finalized by the end of this month.

Bath Landfill: The Department responded to a complaint of sulfur odors from the landfill and installed a hydrogen sulfide monitor. Monitoring results showed evening spikes (90ppb) of hydrogen sulfide at the site. Following immediate consultation with the state toxicologist and the Governor, the decision was made to notify residents of the situation and potential health effects (nausea and head aches). The landfill operator responded promptly and the Town offered to house impacted residents in hotels. The residents seemed thankful and appreciative for how this matter was handled. Long term resolution of the problem, including installation of an active landfill gas collection system will occur in the spring.

QUESTIONS

Board member Ernest Hilton asked about the history of complaints about the landfill and whether the Department knew how long the landfill gas was being released into the area at high levels.

Commissioner Littell explained that he didn't have information regarding the initial discovery, but that he would follow-up. The Commissioner noted that complaints associated with landfills are not unusual. In this case, given the small size of this landfill, the Department was surprised at the levels of air emissions and acted quickly to get a monitoring system up and running. The monitoring equipment was borrowed from Waste Management. Monitors were up and running on January 30th and they will continue to operate at this site.

Board member Ehrenfeld asked if the monitoring system measures for other compounds.
The Commissioner confirmed that the equipment installed only monitors for hydrogen sulfide (H₂S).

Board member Ehrenfeld asked if the opposition by Canada for passage of tankers through Canadian waters changed the timing of DEP's review of the Downeast LNG application.
The Commissioner indicated that Canada's opposition does not impact Maine's review of the pending application.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS AND APPLICATIONS ACCEPTED FOR PROCESSING:

Board member Wing Goodale asked if the two new towers approved for Evergreen Windpower at Mars Hill were an expansion of the previously permitted project or simply part of a phased development.

Commissioner Littell indicated that DEP would report back on the matter.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (7-0-0-3) to approve consent agenda items 1 and 2 as presented.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Denis Culley, Richard Gould, and Don Guimond were absent.

1. OSJ OF BELFAST, LLC, Belfast – Administrative Consent Agreement and Enforcement Order (BRWM)
2. R.J. ENTERPRISES, INC., Wiscasset – Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 378, VARIANCE CRITERIA FOR THE EXCAVATION OF ROCK, BORROW, TOPSOIL, CLAY or SILT AND PERFORMANCE STANDARDS FOR THE STORAGE OF PETROLEUM PRODUCTS / AMENDMENTS (adoption)

Staff: Mark Stebbins, Bureau of Land and Water Quality

The Board voted (6-0-0-4) on a motion to adopt amendments to Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for Storage of Petroleum Products as modified. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B), Section 490-E and Section 490-CC.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Denis Culley, Richard Gould, Don Guimond and Matt Scott were absent.

Modifications: Section 5G. Safety measures (3)

...oil absorbent pads, a non-sparking shovel. In addition, a liquid tight drums or...

2. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (appeal of the Fourth Procedural Order)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

The Board voted (6-0-1-3) on a motion to deny the appeal of FPL Energy Maine Hydro LLC concerning the deadline for submittal of requests for agency staff to appear as witnesses and associated justification and affirm the Fourth Procedural Order. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused. Board members Denis Culley, Richard Gould, and Don Guimond were absent.

THE BOARD CONDUCTED A PUBLIC HEARING BEGINNING AT 1:00 P.M. IN THE MATTER OF:

~ Public Hearing Continuation ~:

Dragon Products Company // Proposed revisions to the leachate management system for the waste clinker pile and associated wetland impacts // [S-02077-WO-B-N and L-04152-TH-T-N]

Next Regular Board Meeting –Thursday, March 1, 2007 – Holiday Inn / Ground Round, Augusta